

ARKANSAS SUPREME COURT

No. CR 08-771

CHARLEY EARL JARRETT
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered October 9, 2008

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
DESHA COUNTY, CR 2005-161, HON.
SAMUEL B. POPE, JUDGE]

MOTION TREATED AS MOTION FOR
RULE ON CLERK AND DENIED.

PER CURIAM

A jury found petitioner Charley Earl Jarrett guilty of rape and sentenced him to life imprisonment. This court affirmed. *Jarrett v. State*, 371 Ark. 100, ___ S.W.3d ___ (2007). Petitioner filed in the trial court a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 and the trial court dismissed the petition as untimely by order entered February 11, 2008.

On February 25, 2008, petitioner filed a timely notice of appeal from the order dismissing the Rule 37.1 petition. The record was not tendered to this court until June 3, 2008, and our clerk correctly declined to lodge the record because it was tendered outside of the ninety-day limit set in Arkansas Rule of Appellate Procedure--Civil 5(a), as applied through Arkansas Rule of Appellate Procedure--Criminal 4(a). As the notice of appeal was timely, we treat the motion as a motion for rule on clerk to lodge the record. *See Ray v. State*, 348 Ark. 304, 73 S.W.3d 594 (2002).

Petitioner asserts that he instructed the circuit clerk to mail the record to him both before and after he received notice that the record was ready and that he promptly mailed the record to our clerk

once it was received. Petitioner filed a motion that requested an extension to time in which to file the record, but the circuit court correctly denied the motion because the record did not require preparation of a stenographic transcript. *See Ark. R. App. P.--Civ. 5(b)*.

We do not consider petitioner's stated cause for the delay in lodging the record, however, because it is clear from the partial record before us that petitioner could not prevail on appeal were we to permit the appeal to proceed. An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam). Here, it is clear that petitioner's Rule 37.1 petition was not timely filed and the trial court could not address the merits of the petition.

Where the judgment was appealed, Arkansas Rule of Criminal Procedure 37.2(c) requires that the petition for postconviction relief must be filed within sixty days of the date the mandate issued. Here, the mandate issued on October 16, 2007. Petitioner filed his petition in the trial court on February 1, 2008, one hundred and eight days after the mandate.

The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam). The trial court could not consider an untimely petition, and petitioner could not prevail were we to grant permission for an appeal to go forward. We therefore deny the motion for rule on clerk.

Motion treated as motion for rule on clerk and denied.